IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 25451 of 2003

Between:

M. Shankaraiah, S/o. Rajam
aged about 35 years, Occ: Ex-Watcher,

R/o. Mohammadabad Village,

Jannaram Mandal, Adilabad Dist. **..... PETITIONER**

AND

1 The Industriaal Tribunal-cum-Labour Court,

rep by its Chairman,
Godavarikhani, Karimnagar Dist.
2 The Forest Range Officer, Tallapeta Range,

Dandepally Mandal, Adilabad Dist.
3 The Divisional Forest Officer, Jannaram, Adilabad Dist.
4 The Principal Chief Conservator of Forest, Forest Department,

A.P. Saifabad, Hyderabad-4.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 1st respondent and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Certiorari, and quash the order passed by the 1st respondent in unregistered I.A.No. of 2001 in Court Folio No. 512 of 2001 in I.D.No. 43 of 2000, dated 2-6-2001 and also the Award passed by the 1st

respondent in I.D,.No. 43 of 2000 dated 30-1-2001, published on 18-4-2001 and consequently grant the relief of reinstatement into service with full back wages and other attendant benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents: GP FOR LABOUR

The Court made the following :

ORDER:

The petitioner herein, who was working as a watcher, filed this writ petition assailing the order passed by the first respondent in an unumbered IA in Court Folio No.512 of 2001 in I.D.No.43 of 2000 dated 2-6-2001 and also the award passed by the first respondent in I.D.No.43 of 2000 dated 30-1-2001 published in the Gazette on 18-4-2001.

Heard learned Counsel for the petitioner and the learned Government Pleader for the respondents. At their request, the main writ petition itself is taken up for disposal.

The case of the petitioner is that he was engaged as a watcher on 30-9-1986 and since then, he has been in continuous service. However, he was illegally terminated from service by the second respondent on 7-3-1995. Thereupon he raised an Industrial Dispute in I.D.No.51 of 1996 under Section 2-A (2) of the Industrial Disputes Act, 1947, wherein the respondents agreed to take the petitioner back into service with continuity of service and the dispute ended in compromise. While so, the petitioner was again terminated from service on 31-3-2000 without any notice as contemplated under the Act. Aggrieved thereby, the petitioner filed I.D.No.43 of 2000, wherein the petitioner was examined as WW.1 and the claim statement and a copy of the award passed by the first respondent in I.D.No.51 of 1996 were marked as Exs.W.1 and W.2. However, subsequent to the commencement of enquiry, the petitioner's Advocate could not possibly be present and his absence was accidental and unintentional. But, the first respondent passed the award dismissing the petitioner's claim on the ground that the petitioner has not

completed 240 days. Subsequently, the petitioner filed an unnumbered I.A. in Court Folio No.512 of 2001 seeking to set aside the *ex parte* award. The first respondent without considering the reasons given by the petitioner in support of his claim, dismissed the petition *vide* impugned order dated 02-06-2001. Aggrieved by the same, the petitioner filed this writ petition.

Having considered the submissions made on either side and also on perusal of the material available on record, the only question which calls for consideration is as to whether in the facts and circumstances of the case, the reasons assigned by the petitioner are justified in setting aside the *ex parte* award.

The undisputed facts are that on an earlier occasion, the petitioner was engaged as a watcher and his services were terminated, for which he raised an Industrial Dispute, which ended in compromise by reinstating him into service. Again the petitioner was terminated from service, which was taken up for enquiry before the first respondent in I.D.No.43 of 2000. During the Course of the enquiry, the petitioner was examined as WW1 and Exs.W.1 and W.2 were marked on his behalf. Thereafter, when the matter was posted for respondents' evidence, the petitioner's Advocate was not present due to which the petitioner could not further participate, and ultimately the impugned award was passed on 30-1-2001.

At this stage, the petitioner has filed the un numbered IA in Court Folio No.512 of 2001 seeking to set aside the *ex parte* award on the ground that on the date of hearing of the I.D. in question, his advocate could not possibly be present and his absence is only due to inadvertence and therefore, he may be afforded an opportunity to prove his case and that the award passed by the first respondent is one sided. Therefore, the same is liable to be set aside.

Admittedly, consequent to the commencement of the trial, there was no participation by the petitioner and the award was passed in his absence. Though the said award is said to have been passed on merits but that is only based on the material available on record without affording an opportunity to the petitioner. The fact remains that the petitioner was absent and he had no opportunity to contest the petition. It is a settled proposition that the provisions under the revised Act and the

Procedure are meant only to meet the ends of justice but not to use them as a sort of punishment. Apart from that, the issue shall be adjudicated basing on its own merits, but not on mere technicalities in order to avoid multiplicity of proceedings. In the circumstances, it is a fit case wherein an opportunity should be afforded to the petitioner.

Writ petition is accordingly allowed. The order in un numbered I.A. in Court Folio No.512 of 2001, passed on 2.6.2001, is set aside and consequently, the said petition is allowed setting aside the award in I.A.No.43 of 2000 dated 30-1-2001 including the impugned publication.

However, the matter is remitted to the first respondent for fresh disposal on its own merits, after affording an opportunity to both the parties. It is made clear that the I.D. shall be disposed of within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

It is needless to observe that the respondents are entitled to raise all the objections including the maintainability of the dispute in question before the Tribunal.

25th March,2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Friday, the twenty fifth day of March, Two thousand and five.

REGISTRAR

Copy to:

1 The Chairman,

Industrial Tribunal-cum-Labour Court,

Godavarikhani, Karimnagar Dist.
2 The Forest Range Officer, Tallapeta Range,

Dandepally Mandal, Adilabad Dist.
3 The Divisional Forest Officer, Jannaram, Adilabad Dist.
4 The Principal Chief Conservator of Forest,

Forest Department, A.P. Saifabad, Hyderabad-4.

5 Two CCs to the G.P. for Labour,

High Court Buildings, High Court of A.P.,

Hyderabad. (O.U.T.)

6 Two CD copies.